

HON. JOHN C. COUGHENOUR

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SIERRA CLUB, *et al.*,

Plaintiffs,

V.

BNSF RAILWAY COMPANY,

Defendant.

Case No. 2:13-cv-00967-JCC
(consolidated with No. 2:14-cv-00660)

[PROPOSED] CONSENT DECREE

[PROPOSED] CONSENT DECREE
CASE NO. 2:13-cv-00967-ICC

BEVERIDGE & DIAMOND, P.C.
1350 I St., NW, Suite 700
Washington, D.C. 20005
202-789-6000

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[PROPOSED] CONSENT DECREE
CASE NO. 2:13-cv-00967-JCC

BEVERIDGE & DIAMOND, P.C.
1350 I St., NW, Suite 700
Washington, D.C. 20005
202-789-6000

1 **WHEREAS**, Plaintiffs Sierra Club, Puget Soundkeeper Alliance, RE Sources for
2 Sustainable Communities, Columbia Riverkeeper, Friends of the Columbia Gorge, Spokane
3 Riverkeeper, and Natural Resources Defense Council (collectively, “Plaintiffs”) filed a Complaint
4 in this Court seeking civil penalties, as well as declaratory and injunctive relief, against Defendant
5 BNSF Railway Company (“BNSF” and collectively with Plaintiffs, the “Parties”) and others on
6 June 4, 2013, alleging violations of the Clean Water Act, 33 U.S.C. § 1251 *et seq.* (the “CWA” or
7 the “Act”);
8

9 **WHEREAS**, Plaintiffs filed a separate Complaint in the United States District Court for
10 the Eastern District of Washington similarly alleging that BNSF and others had violated the CWA
11 (assigned Civil No. 2:13-cv-00272 (E.D. Wash.) and hereafter referred to as the “Eastern District
12 Action”);
13

14 **WHEREAS**, the Eastern District Action was transferred to this Court and assigned Civil
15 No. 2:14-cv-00660, after which it was consolidated with the above-captioned civil action (ECF
16 No. 84) (“the Litigation”);
17

18 **WHEREAS**, subsequent to consolidation, on May 6, 2015, Plaintiffs filed their Third
19 Amended Complaint (ECF No. 113) naming only BNSF as a Defendant;
20

21 **WHEREAS**, prior to filing their initial Complaint, Plaintiffs sent to BNSF and others
22 Notices of Intent to Sue dated April 2, 2013 and May 9, 2013 in which they stated their intent to
23 assert claims for alleged violations of CWA sections 301 and 404, 33 U.S.C. §§ 1311, 1344, and
24 the Rivers and Harbors Act of 1899, 33 U.S.C. § 403, *et seq.*, and further asserted that “[t]he
25 pollutants that the Dischargers have discharged, are discharging, and will continue to discharge
26 include, but are not limited to, coal, coal chunks, coal dust, metabolites or related byproducts of

1 coal, surfactants applied to the coal, coal chunks and coal dust, petcoke, petcoke chunks, petcoke
2 dust, and suppressants”;

3 **WHEREAS**, CWA Section 301(a), 33 U.S.C. § 1311(a), prohibits the unpermitted
4 discharge of any pollutant to waters of the United States;

5 **WHEREAS**, Plaintiffs brought their action against BNSF for alleged CWA violations
6 pursuant to Section 505 of the Act, 33 U.S.C. § 1365;

7 **WHEREAS**, BNSF is a Class I railroad operating in 28 states. BNSF transports freight,
8 including a number of commodities, for a wide range of customers. As a Class I railroad, BNSF
9 operates as a common carrier subject to the jurisdiction of the Surface Transportation Board
10 (“STB”). BNSF’s status as a common carrier requires the railroad to provide transportation of
11 goods on reasonable request;

12 **WHEREAS**, coal and petroleum coke (“petcoke”) are among the commodities that BNSF
13 transports for its customers. BNSF transports coal, petcoke, and other commodities in open-top
14 railcars in the State of Washington and several other states;

15 **WHEREAS**, Paragraph 48 of Plaintiffs’ Third Amended Complaint alleges that “[e]ach
16 and every coal train and each and every rail car carrying coal discharges coal pollutants to waters
17 of the United States when traveling adjacent to, over, and in proximity to waters of the United
18 States.” Paragraph 3 of the Third Amended Complaint defines “coal pollutants” to include “coal,
19 coal chunks, coal dust, metabolites or related byproducts of coal, and other substances or materials
20 added to the coal including, but not limited to, surfactants and suppressants, and petroleum coke.”
21 The Third Amended Complaint further alleges that BNSF did not obtain any permit to discharge
22 any pollutants from its railcars;

1 **WHEREAS**, BNSF asserted defenses to the allegations contained in the Third Amended
2 Complaint, expressly denies Plaintiffs' allegations in their entirety, and admits no liability by
3 entering this Consent Decree;

4 **WHEREAS**, the Parties recognize that this Consent Decree is a settlement of a contested
5 matter;

6 **WHEREAS**, the objective of the Parties in entering this Consent Decree is to resolve the
7 Litigation; and

8 **WHEREAS**, the Parties acknowledge that this Consent Decree has been negotiated by the
9 Parties in good faith and will avoid further litigation, and the Court, in entering this Consent
10 Decree, finds that this Decree is fair, reasonable, and in the public interest.

12 **NOW, THEREFORE**, without the admission of any issue of fact or law except as
13 provided in Section I, and with the consent of the Parties,

14 **IT IS HEREBY ADJUDGED, ORDERED, AND DECREED** as follows:

16 **I. GENERAL PROVISIONS**

17 1. Jurisdiction and Venue. This Court has jurisdiction over the subject matter of this action
18 and the Parties pursuant to 28 U.S.C. § 1331 and 33 U.S.C. § 1365(a). Venue is proper in this
19 judicial district pursuant to section 505(c) of the Act, 33 U.S.C. § 1365(c), because the Complaint
20 alleges that discharges in violation of the Act occurred in this judicial district. BNSF does not
21 challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this
22 Consent Decree.

24 2. Retention of Jurisdiction. This Court shall retain jurisdiction for the purposes of issuing
25 such further orders and directions as may be necessary and appropriate for the implementation or

modification of this Consent Decree, enforcing compliance with, or resolving disputes regarding
1 the provisions of this Consent Decree.
2

3. Reservation of Rights. The Parties reserve the right to enforce the terms of this Consent
4 Decree and take any action authorized by federal or state law not inconsistent with this Consent
5 Decree.

6. Parties Bound. This Consent Decree shall be binding upon Plaintiffs, BNSF, and their
7 respective officers, agents, servants, employees, successors, and assigns.

8. Counterparts. This Consent Decree may be signed in counterparts, and such counterpart
9 signature pages shall be given full force and effect.

10. DOJ and EPA Review. The Parties recognize that, under 33. U.S.C. § 1365(c)(3), this
11 Consent Decree can be entered only forty-five (45) days after the Attorney General of the United
12 States and the Administrator of the Environmental Protection Agency receive a copy of this
13 proposed Consent Decree. Plaintiffs shall serve copies of the executed Consent Decree upon the
14 Administrator of the United States Environmental Protection Agency, the Attorney General, and
15 the Regional Administrator for EPA Region 10, and Plaintiffs shall provide notice to the Court of
16 the foregoing requirements, as required pursuant to 40 C.F.R. § 135.5.

17. Final Judgment. Upon approval and entry of this Consent Decree by the Court, this
18 Consent Decree shall constitute a final, non-appealable judgment of the Court under Rules 54 and
19 58 of the Federal Rules of Civil Procedure.

20 II. CAR COVER STUDY

21. BNSF shall conduct a study to assess the commercial and operational feasibility of car
22 covers for use on open-top coal and petcoke railcars (the “Car Cover Study”). In its sole
23

discretion, BNSF may conduct this study in cooperation with various interested stakeholders,
1 including without limitation, the Association of American Railroads, its customers, mine operators
2 located in the Powder River Basin, or others invited by BNSF, to the extent they may agree to
3 participate. It is anticipated that the Car Cover Study will occur over a period of approximately
4 two years following entry of this Consent Decree.

9. BNSF's obligation to conduct the Car Cover Study under Paragraph 8 shall require BNSF
7 to assess only car cover designs for which a functioning prototype is reasonably available to BNSF
8 within six months of the date of entry of this Consent Decree. As part of the first phase of the Car
9 Cover Study, BNSF shall conduct outreach and solicit participation from car cover manufacturers.

10. This Consent Decree shall not be construed to require BNSF to assess any conceptual car
12 cover design or develop any car cover design. As between the Parties, BNSF is exclusively
13 responsible for conducting and overseeing the Car Cover Study, as well as arranging for
14 equipment and personnel.

15. Once during each six-month period (January – June and July – December of each year)
16 until the conclusion of the Car Cover Study, BNSF shall provide to Plaintiffs electronic copies of
17 final versions of all reports, technical specifications of car cover designs, testing results, testing
19 procedures, and testing data created for the Car Cover Study. Prior to receiving any such
20 information pursuant to this Paragraph, each Plaintiff organization shall execute a confidentiality
21 agreement acceptable to all study participants, including without limitation any companies whose
22 covers will be assessed. Plaintiffs acknowledge that BNSF reserves the right to redact cover
23 manufacturer-, customer-, mine- and utility-specific information in any document provided
24 pursuant to this Paragraph, and Plaintiffs agree that the redaction of such information shall not be
25

1 a basis for challenging the adequacy of BNSF's compliance with this Paragraph. In the event that
 2 Plaintiffs contend that any information redacted by BNSF prevents Plaintiffs from assessing
 3 compliance with this Consent Decree, Plaintiffs may invoke the Dispute Resolution provisions in
 4 Section VIII to contest the necessity for such redactions.

5 12. If, in its sole discretion, BNSF determines that any car cover design assessed under
 6 Paragraph 8 is commercially and operationally feasible, then BNSF shall undertake good faith
 7 efforts to amend the safe harbor provision of BNSF Price List 6041-B (the "Coal Loading Rule")
 8 to add such car cover design(s) within 90 days of the conclusion of the car cover study. A
 9 decision by the STB concluding that any amendment to the Coal Loading Rule proposed pursuant
 10 to this Paragraph is unreasonable or otherwise invalid shall not constitute the basis for any
 11 allegation that BNSF has not complied with its obligations under this Decree.

13. 13. For the purpose of Section II, commercial and operational feasibility of a car cover design
 14 shall mean that a particular car cover (a) when used during loading and unloading operations, and
 15 in transit, poses no unreasonable risk of property damage or of bodily harm to BNSF employees,
 16 employees of any shipper for which BNSF transports coal and/or petcoke, employees of any mine,
 17 or to the general public; (b) can be physically attached to existing open-top railcars transported by
 18 BNSF without unreasonable modification to such railcars, (c) will function properly and as
 19 intended throughout all operational conditions encountered by BNSF trains while in-transit, (d)
 20 complies with all applicable regulatory requirements and industry equipment and interchange
 21 rules, (e) conforms to all applicable BNSF clearance and operational requirements, (f) requires no
 22 unreasonable modifications to equipment or processes used in loading or unloading coal and
 23 petcoke into or out of railcars, (g) would not be unreasonably expensive to procure, install,
 24

1 operate, replace, repair, or maintain; and (h) otherwise meets the requirements of the Coal Loading
 2 Rule. Notwithstanding any such determination of commercial and operational feasibility by
 3 BNSF, mines, shippers, or any other entity providing rail cars cannot be required by BNSF to
 4 adopt or accept any specific railcar covers or associated modifications to equipment or loading or
 5 unloading processes.

6 14. In the event that BNSF determines in its sole discretion that there exists one or more car
 7 cover design that is commercially and operationally feasible under Section II, BNSF shall present
 8 the results of the Car Cover Study at the following rail transportation and coal industry meetings
 9 or conferences during the two-year period following the conclusion of the Car Cover Study:
 10 American Railway Engineering and Maintenance of Way Association meetings, the National Coal
 11 Transportation Association meetings, and the Railroad Environmental Conference. BNSF shall
 12 provide Plaintiffs with copies of any materials that BNSF uses to present the results of the Car
 13 Cover Study at those events.

15 III. REMOVAL

16 15. BNSF shall remove significant accumulations of coal and/or petcoke materials in areas on
 17 or adjacent to BNSF's right-of-way at each of the locations identified in Appendix A to this
 18 Consent Decree, as identified at trial and in designated deposition testimony. BNSF shall
 19 complete this initial removal of accumulations of coal and/or petcoke materials from each of these
 20 locations no later than one (1) year from entry of this Consent Decree.

21 16. Within thirty (30) business days of completion of the removal of coal and/or petcoke
 22 material at each site required by Paragraph 15, BNSF shall notify Plaintiffs that the removal is
 23 complete. The notification shall include before and after photographs and other documentation

1 reasonably necessary to demonstrate that BNSF has removed materials consistent with Paragraph
2
3 15.

4 17. BNSF shall conduct follow-up inspections of each area identified in Appendix A two times
5 during the period of this Consent Decree. BNSF will use good faith efforts to conduct the first
6 inspection between 9-12 months after service of the notification required by Paragraph 16, and the
7 second 9-12 months after the preceding inspection, subject to the availability of sufficient track
8 windows, and taking into consideration weather, safety, and other factors that could restrict the
9 time available to conduct an inspection. Within thirty (30) days of each inspection, BNSF shall
10 provide Plaintiffs with a statement as to whether any significant accumulations of coal and/or
11 petcoke materials require removal consistent with Paragraph 16.

12 18. In the event that BNSF identifies significant accumulations of coal and/or petcoke
13 materials in areas on or adjacent to BNSF's property during either of the two subsequent
14 inspections required by Paragraph 17, BNSF shall remove such materials in the same manner as in
15 Paragraph 15. Within thirty (30) days of completion of any additional removal required by this
16 Paragraph, BNSF shall notify Plaintiffs in writing that this additional removal is complete. The
17 notification shall include photographs or other documentation reasonably necessary to demonstrate
18 that BNSF has complied with its obligations under this Paragraph.
19

20 19. BNSF's obligation to remove significant accumulations of coal and/or petcoke material
21 under Paragraphs 15 and 18 shall be limited to material on land. BNSF is only required to use
22 non-invasive methods or techniques (e.g., vacuuming) to conduct the removal, and the means and
23 methods to conduct the removal required under Section III are within BNSF's sole discretion. In
24 no event shall BNSF be required under this Consent Decree to conduct any removal activities in
25
26

any waterway, including any water of the United States, or conduct any ballast or track
 1 maintenance activities to remove materials from BNSF track, nor shall BNSF be obligated to
 2 remove non-significant accumulations or scattered, individual pieces or fragments of coal and/or
 3 petcoke material. BNSF shall not be required through this Consent Decree to remove coal and/or
 4 petcoke materials under Paragraphs 15 or 18 from any property in the event that any property
 5 owner declines to allow BNSF or its contractors access to their property under reasonable
 6 conditions.
 7

20. In the event that Plaintiffs disagree with any determination that (a) BNSF has completed
 9 removal of significant accumulations of coal and/or petcoke material at any location under
 10 Paragraphs 15 and 18, (b) any subsequent inspection pursuant to Paragraph 17 identified no new
 11 and significant accumulations of coal and/or petcoke material that require removal, or (c) BNSF
 12 has completed any subsequent removal of significant accumulations of coal and/or petcoke
 13 material required under Paragraph 18, Plaintiffs may invoke the Dispute Resolution procedures in
 14 Section VIII.

17 IV. SUPPLEMENTAL ENVIRONMENTAL PROJECTS

21. Within 30 days of the date this Consent Decree is approved by the Court, BNSF shall pay
 18 \$1,000,000 to The Rose Foundation for Communities and the Environment for projects to improve
 19 water quality or habitat in the State of Washington (and, to the extent they may improve habitat or
 20 water quality of the Columbia River, in the State of Oregon). *See* Attachment 1 (Letter from Rose
 21 Foundation). Such payment shall be made by check payable and mailed to The Rose Foundation
 22 for Communities and the Environment, Attention: Tim Little, 1970 Broadway, Suite 600,
 23 Oakland, California 94612, and shall bear the notation “Sierra Club, et al. v. BNSF Railway Co.,
 24
 25

Clean Water Act Settlement," with a copy provided to Plaintiffs at the time payment is made.

V. RELEASE AND CONVENTION NOT TO SUE

22. Plaintiffs release BNSF for all claims that were or could have been brought in this
4 litigation.

5 23. Plaintiffs covenant not to sue BNSF systemwide under the Clean Water Act or analogous
6 state law or any common law theory on the theory of material leaving open-top rail cars and
7 entering waters of the United States or waters of any state for any events or occurrences arising
8 over the next five years.

9 24. Any information provided by BNSF to Plaintiffs pursuant to this Consent Decree shall not
10 be admissible in any proceeding against BNSF or any entity that meaningfully participates in the
11 Car Cover Study (as that term is defined in Section II). Notwithstanding the previous sentence,
12 information provided by BNSF to Plaintiffs pursuant to this Consent Decree may be used in
13 proceedings to enforce the terms of this Decree.

14 25. If the Consent Decree is terminated prior to five (5) years from the date of entry of the
15 Consent Decree, the provisions of Paragraphs 23 and 24 shall survive for the remainder of the five
16 (5) year term of the covenant not to sue.

17 26. The Parties agree that, as of the date of the entry of this Consent Decree, litigation is not
18 "reasonably foreseeable" concerning the matters described in the Third Amended Complaint. To
19 the extent that any Party previously implemented a litigation hold to preserve documents or
20 electronically stored information related to the Litigation, the Party is no longer required to
21 maintain such litigation hold. Nothing in this paragraph relieves any Party of any other
22 obligations imposed by this Consent Decree or of the obligation to implement a litigation hold
23

1 concerning the rights, obligations, and duties set forth in this Consent Decree.

2 **VI. ATTORNEYS' FEES AND COSTS**

3 27. By entering into this Consent Decree, BNSF in no way acknowledges or concedes that
4 Plaintiffs are entitled to recover any costs of litigation (including attorney fees or expert witness
5 fees).

6 28. Notwithstanding L.C.R. 54, within sixty (60) days of entry of this Consent Decree,
7 Plaintiffs may file with the Court a petition under 33 U.S.C. § 1365(d) seeking an award of
8 attorneys' fees and litigation costs (including but not limited to expert witnesses' fees and costs).
9 BNSF reserves the right to contest such a petition.

10 **VII. FORCE MAJEURE AND EXCUSABLE DELAYS**

11 29. BNSF shall perform all requirements under this Consent Decree in the manner and within
12 the time limits established herein, unless performance is delayed or prevented by Force Majeure or
13 Excusable Delay, which are defined for purposes of this Consent Decree as events or
14 circumstances arising from causes not reasonably foreseeable and beyond the control of BNSF, or
15 any entity controlled by BNSF or BNSF's contractors, which delay or prevent performance of any
16 obligation under this Consent Decree despite due diligence and best efforts to fulfill the obligation.
17 Events and circumstances beyond the control of BNSF may include, without limitation,
18 earthquake, flood, hurricane, severe weather or other act of God, war, riot, fire, injunction, labor
19 stoppage, freight embargo, material shortages, and compliance with any law, rule, or decree of any
20 governmental body, either now existing or hereafter created, that conflicts with the requirements
21 or obligations of this Consent Decree. Such events and circumstances do not include normal
22 inclement weather, financial inability to complete the work, increased cost of performance,
23
24

25 [PROPOSED] CONSENT DECREE
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1 changes in BNSF's business or economic circumstances, or the failure to obtain federal, State, or
 2 local permits, authorizations and approvals, unless BNSF has made timely and complete
 3 application for such permits, authorizations, and approvals.

4 30. BNSF shall notify the Plaintiffs in writing within ten (10) business days after becoming
 5 aware of an event or circumstance that BNSF believes constitutes Force Majeure or Excusable
 6 Delay that may prevent or delay performance of an obligation under this Consent Decree. BNSF's
 7 notification shall describe in detail the anticipated length of the delay, the precise cause or causes
 8 of the delay, the measures taken and to be taken by BNSF to prevent or minimize the delay, and a
 9 timetable by which those measures will be implemented. BNSF shall adopt all reasonable
 10 measures to avoid or minimize any such delay. BNSF shall include in the notification a proposed
 11 extension of the deadline associated with any obligation under this Consent Decree whose
 12 performance may be prevented or delayed by unforeseeable events or circumstances beyond
 13 BNSF's reasonable control.

14 31. Unless BNSF's notice contains no reasonable basis to conclude that the circumstance,
 15 event, or anticipated event identified in the notice has caused or will cause a delay that constitutes
 16 a Force Majeure or Excusable Delay, the time for performance shall be extended by an appropriate
 17 period substantially equal to the necessary delay.

18 **VIII. DISPUTE RESOLUTION**

19 32. The Dispute Resolution procedures of this Section shall be the exclusive mechanism for
 20 the parties to raise and resolve disputes arising under or with respect to this Consent Decree
 21 ("Covered Dispute").

33. A Covered Dispute shall be considered to have arisen when one Party sends the other Part(ies) a written Notice of Dispute.

34. Any Covered Dispute shall, in the first instance, be the subject of informal negotiations between the Parties in an attempt to resolve the dispute in good faith and in an expeditious manner. The Parties shall have thirty (30) days following receipt of a Notice of Dispute to reach agreement.

35. If the Parties cannot reach agreement on the dispute during the 30-day period provided under Paragraph 33, Plaintiffs and BNSF shall jointly file a motion with the Court requesting resolution of the Covered Dispute. Plaintiffs and BNSF shall append to that motion written statements not to exceed five (5) single-spaced pages (excluding attachments or exhibits) setting forth their respective proposed resolutions of the dispute.

36. The Parties shall comply with any written agreement reached as a result of informal negotiations conducted during the 30-day period provided for by Paragraph 33, including any extension of time to comply with a schedule or deadline required by this Consent Decree, so long as the agreement does not constitute a material change to any terms of this Consent Decree. Section X of this Consent Decree shall govern the process for any proposed material changes to the terms of this Consent Decree.

IX. NOTICES

37. Unless otherwise specified herein, any notification, submission, statement of position, or communication required by this Consent Decree shall be made electronically, unless otherwise requested, and addressed as follows:

1 As to Plaintiffs: Charles M. Tebbutt, charlie@tebbuttlaw.com
2 Daniel C. Snyder, dan@tebbuttlaw.com
3 David Pettit, dpettit@nrdc.org
4 Jessica Yarnall Loarie, jessica.yarnall@sierraclub.org

5 As to BNSF: Timothy M. Sullivan, tsullivan@bdlaw.com
6 Dava Kaitala, Dava.Kaitala@BNSF.com
7 Brooke Gaede, Brooke.Gaede@BNSF.com

8 38. Any Party may, by written notice to all other Parties, change its designated notice recipient
9 or notice address provided above.

10 39. Notices submitted pursuant to this Section shall be deemed submitted upon electronic
11 transmission, unless otherwise provided in this Consent Decree or by mutual agreement of the
12 Parties in writing.

13 X. MODIFICATION

14 40. This Consent Decree contains the entire agreement of the Parties and shall not be modified
15 by any prior oral or written agreement, representation, or understanding. Any non-material
16 modification of this Consent Decree after entry may be made without approval of the Court but
17 must be in writing and approved by the Parties.

18 41. Any material modification to any term of this Consent Decree shall be effective only upon
19 approval by the Court.

20 42. A Party shall not petition the Court for modification without having first made a good faith
21 effort to reach agreement with the other Part(ies) on such modification. Notwithstanding the
22 above, any Party may, after having made such effort, petition the Court for a modification of this
23 Consent Decree and the Court shall rule on any such petition pursuant to law in effect at such
24 time. Any ruling by the Court on a petition for modification may be appealed by a Party in
25 accordance with law.

1 time. Any ruling by the Court on a petition for modification may be appealed by a Party in
2 accordance with law.

3 **XI. TERMINATION**

4 43. Upon completion of all of the work required by this Consent Decree, BNSF shall notify
5 Plaintiffs in writing that it has fully satisfied all Consent Decree requirements. This notification
6 shall indicate the case name and civil action number.

7 44. Should Plaintiffs disagree with BNSF's notification under Paragraph 42, Plaintiffs may
8 invoke Dispute Resolution pursuant to Section VIII within ten (10) days of receipt of the
9 certification.

10 45. Following the notification that BNSF has completed all work required under the Consent
11 Decree, either Party, or the Parties jointly, may move this Court to terminate this Consent Decree.

12 DATED: March 3, 2017.

13 WE HEREBY CONSENT to the Entry of this Consent Decree.
14

15 **Sierra Club**

16 By: 

17 Name: Jessica Yarnall Loarie

18 **Natural Resources Defense Council**

19 By: _____

20 Name: _____

21 **Spokane Riverkeeper**

22 By: _____

23 Name: _____

1 time. Any ruling by the Court on a petition for modification may be appealed by a Party in
2 accordance with law.

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12 DATED: March 3, 2017.

13 WE HEREBY CONSENT to the Entry of this Consent Decree.
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15 **Sierra Club**

16 By: _____

17 Name: _____

18 **Natural Resources Defense Council**

19 By: David Pettit

20 Name: David Pettit

22 **Spokane Riverkeeper**

23 By: _____

24 Name: _____

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15 **Sierra Club**

16 By: _____

17 Name: _____

18 **Natural Resources Defense Council**

19 By: _____

20 Name: _____

22 **Spokane Riverkeeper**

23 By: R. Jerome White, Jr.

24 Name: R. Jerome White, Jr.

26 [PROPOSED] CONSENT DECREE
CASE NO. 2:13-cv-00967-JCC

BEVERIDGE & DIAMOND, P.C.
1350 I St., NW, Suite 700
Washington, D.C. 20005
202-789-6000

1 Friends of the Columbia River Gorge, Inc.
2

3 By: Nathan J. Baker

4 Name: Nathan J. Baker, Senior Staff Attorney

5 **Columbia Riverkeeper**

6 By: _____
7

8 Name: _____
9

10 **Puget Soundkeeper Alliance**

11 By: _____
12

13 Name: _____
14

15 **RE Sources for Sustainable Communities**

16 By: _____
17

18 Name: _____
19

20 *Plaintiffs*

21 **BNSF Railway Co.**

22 By: _____
23

24 Name: _____
25

26 *Defendant*

IT IS SO ORDERED THIS _____ DAY OF _____, 2017.

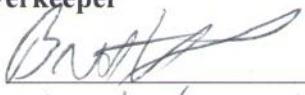
John C. Coughenour
UNITED STATES DISTRICT JUDGE

1 **Friends of the Columbia River Gorge, Inc.**

2 By: _____

3 Name: _____

4 **Columbia Riverkeeper**

5 By: 

6 Name: Brett Vanden Heuvel

7 **Puget Soundkeeper Alliance**

8 By: _____

9 Name: _____

10 **RE Sources for Sustainable Communities**

11 By: _____

12 Name: _____

13 *Plaintiffs*

14 **BNSF Railway Co.**

15 By: _____

16 Name: _____

17 *Defendant*

18 IT IS SO ORDERED THIS _____ DAY OF _____, 2017.

19
20
21
22
23
24 John C. Coughenour
25 UNITED STATES DISTRICT JUDGE

26 [PROPOSED] CONSENT DECREE
CASE NO. 2:13-cv-00967-JCC

BEVERIDGE & DIAMOND, P.C.
1350 I St., NW, Suite 700
Washington, D.C. 20005
202-789-6000

1 **Friends of the Columbia River Gorge, Inc.**

2 By: _____

3 Name: _____

4 **Columbia Riverkeeper**

5 By: _____

6 Name: _____

7 **Puget Soundkeeper Alliance**

8 By: 

9 Name: Chris Wilke

10 **RE Sources for Sustainable Communities**

11 By: _____

12 Name: _____

13 *Plaintiffs*

14 **BNSF Railway Co.**

15 By: _____

16 Name: _____

17 *Defendant*

18 IT IS SO ORDERED THIS _____ DAY OF _____, 2017.

19
20
21
22
23
24 _____
25 John C. Coughenour
26 UNITED STATES DISTRICT JUDGE

[PROPOSED] CONSENT DECREE
CASE NO. 2:13-cv-00967-JCC

BEVERIDGE & DIAMOND, P.C.
1350 I St., NW, Suite 700
Washington, D.C. 20005
202-789-6000

1 By: _____

2 Name: _____

3 **Columbia Riverkeeper**

4 By: _____

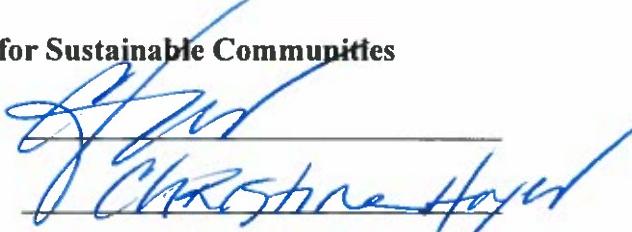
5 Name: _____

6 **Puget Soundkeeper Alliance**

7 By: _____

8 Name: _____

9 **RE Sources for Sustainable Communities**

10 By: 

11 Name: 

12 *Plaintiffs*

13 **BNSF Railway Co.**

14 By: _____

15 Name: _____

16 *Defendant*

17 IT IS SO ORDERED THIS _____ DAY OF _____, 2017.

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23 John C. Coughenour
24 UNITED STATES DISTRICT JUDGE
25
26

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3 Name: _____

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6 Name: _____

7 **Puget Soundkeeper Alliance**

8 By: _____

9 Name: _____

10 **RE Sources for Sustainable Communities**

11 By: _____

12 Name: _____

13 *Plaintiffs*

14 **BNSF Railway Co.**

15 By: _____

16 Name: Roger Nuber

17 *Defendant*

18 IT IS SO ORDERED THIS _____ DAY OF _____, 2017.

19
20 John C. Coughenour
21
22 UNITED STATES DISTRICT JUDGE

23 [PROPOSED] CONSENT DECREE
24 CASE NO. 2:13-cv-00967-JCC

25 BEVERIDGE & DIAMOND, P.C.
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APPENDIX A Removal Sites

Description	Segment of BNSF Right Of Way	
	Start	End
Rail Bridge at Drano lake and Drano Lake Parking Area	45.710015 N, 121.639022 W	45°42'41.21"N 121°38'58.01"W
Confluence of White Salmon and Columbia Rivers	45°43'42.30"N 121°31'15.54"W	45.729216 N 121.524720 W
Confluence of Rock Creek and Columbia River	45°41'23.24"N 121°53'15.21"W	45°41'20.77"N 121°53'19.90"W
Horsethief Lake Site – Area in vicinity of public access to boat ramp and along the top of the causeway	45.646089 N 121.096466 W	45.639152 N 121.104766 W
Causeway near Murdock	45.658225 N 121.198597 W	45.658771 N 121.198875 W